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# THE INTERIM

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## STATE-TRIBAL RELATIONS COMMITTEE

Committee Holds Final Meeting...The State-Tribal Relations Committee held its final meeting of the interim by telephone conference call on Sept. 16. The Committee approved the following bill drafts for introduction in the 2003 session:

- **LC 178, American Indian Member on Parole Board:** LC 178 would require the Board of Pardons and Parole to have one member, either a regular member or an auxiliary member, who is an American Indian. If a qualified American Indian is not available for appointment, the member must be a person who possesses particular knowledge of Indian culture and problems. Current law requires that one member be knowledgeable of Indian culture and problems but does not have to be an American Indian.
- **LC 179, Native American Religious Traditionalist at Department of Corrections:** LC 179 would require that the Department of Corrections provide, in the same manner as other denominational chaplains are provided, a person who is knowledgeable in traditional Native American religious practices to minister to Indian inmates. Currently, Native American religious traditionalists are not provided on a regular basis.
- **LC 182, Funding for Nonbeneficiary Students at Tribal Colleges:** LC 182 would require that the Board of Regents provide funding to resident nonbeneficiary students attending tribal colleges out of the lump-sum appropriation to the regents for the Montana university system. The regents currently provide funding only if there is a specific line-item appropriation for that purpose. Nonbeneficiary students are generally non-Indian students who attend tribal colleges and for whom the tribal colleges receive no federal funding.

Committee Rejects Other Legislative Proposals...The committee considered but then rejected two other proposals. LC 177 would have established small business information centers at community colleges and provided some state funding for tribal business information centers at tribal colleges. Staff reported that the Department of Commerce operates the Small Business Development Center program that provides training and assistance to new and existing small businesses. These centers are located in 10 cities across the state. The committee concluded that establishing centers at community colleges would duplicate the department's program. Also, with the Legislature facing massive deficits in January, funding for new programs would not be feasible.

LC 180 would have requested an interim study of the high drop-out rate of Indian students from public schools and the development of a plan to address the problem. Some members believed that this issue had already been studied and the problems should be addressed at the local level. Other members questioned why this committee was requesting the study and not the Education and Local Government Committee.

Action on Bill Draft Deferred...LC 181 would have required the Department of Corrections to establish a prerelease center on an Indian reservation. In 2001, the Legislature directed the department to conduct a feasibility study on establishing a reservation prerelease center. Staff reported that the department had visited three reservations and would be visiting the other four reservations and the Little Shell Tribe in September. Department and tribal officials are discussing employment opportunities, community safety, jurisdiction, and education and counseling services related to the prerelease center. Following all of the visits, the department will prepare a final report for the next Legislature. Staff recommended that the committee defer a decision on LC 181 until the Department of Corrections has completed its feasibility study.

Committee Approves Final Report...With a few editorial changes and additions, the committee approved its draft final report. When completed, the report will be available on the committee's website at [www.leg.mt.gov](http://www.leg.mt.gov). Just click on "Committees" and follow the links. The committee's bill drafts can also be found on the website by clicking on "2003 Session" then "2003 Session (LAWS)". You can access the bills by using the LC numbers.

For more information about the committee or about the bill drafts, please contact Connie Erickson at (406) 444-3064 or at [cerickson@mt.gov](mailto:cerickson@mt.gov).

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee Finishes Interim Work...The Education and Local Government Committee held its final interim meeting on Sept. 13. The committee approved three agency bills for drafting, heard from the League of Cities and Towns, approved two

committee bills, approved three final reports, and heard from Lt. Gov. Karl Ohs on Gov. Judy Martz's response to the committee's HB 625 report on K-12 public school funding.

Committee Approves Agency Bills... Commissioner of Higher Education Richard Crofts presented two bill draft requests from the Board of Regents. The first request, LC 504, would give the Board of Regents oversight of certain postsecondary educational institutions. These institutions are generally schools that are not accredited by agencies recognized by the federal government. They are often trade schools or schools that offer degrees over the Internet. In recent years there have been some highly publicized instances of the closure of these types of schools in Montana with disastrous results for students. Crofts said that the Montana Guaranteed Student Loan Program is willing to assume the oversight responsibility. The second bill draft request, LC 505, would amend the Montana Family Education Savings Act by increasing the maximum annual income tax deduction from \$3,000 to \$5,000 for contributions to an account to pay for higher education expenses.

Madalyn Quinlan presented a bill draft request from the Office of Public Instruction (OPI). LC 503 would require that county school superintendents submit budget reports to OPI for the county transportation and county retirement funds. The budget report would include details on the adopted budget, operating reserves, budgeted revenue by source, and fund balance reappropriated. Currently, county superintendents are only required to report mill levies to OPI for these funds.

League of Cities and Towns Discusses Legislative Proposals... Alec Hansen of the Montana League of Cities and Towns presented some of the proposals that the League may pursue during the 2003 Legislature. Hansen discussed the League's guiding principles in determining support for or opposition to legislation. These principles are diversity of the tax base, stability of local governments, state/local partnership, role of cities and towns in economic development, local control, and unfunded mandates.

Some of the issues that the League will be interested in next session include the HB 124 entitlement share; a local option tax; land use issues, especially impact fees; the Main Street Program; and the Treasure State Endowment Program. Most of the League's proposals will be defensive in nature. The League will make its final legislative decisions at its annual conference in October.

Committee Approves Two Committee Bills... The committee is requesting two committee bills. LC 506, recommended by the HJR 41 Subcommittee, would establish a procedure for transferring territory from one school district to another school district. LC 507 would create a permanent Postsecondary Education Policy and Budget (PEPB) Subcommittee of the Education and Local Government Committee. This bill draft was recommended by the current PEBP Subcommittee.

Governor Responds to Committee's Report on HB 625... Lt. Gov. Karl Ohs delivered Gov. Judy Martz's response to the committee's report on HB 625 that was presented to the governor in August. In her response, Gov. Martz thanked the committee for its hard work and stated that her office will explore the following ideas in

preparation for the 58th Legislature:

- establish a state health insurance pool for school district employees;
- propose a transportation funding structure as outlined in HB 163 (2001 session);
- calculate the ANB for a district by using the average enrollment over a period of time;
- use HB 124 block grants for debt service to expand school facility payments; and
- allow school district trustees to allocate the remaining balance of a district's HB 124 block grants to any budgeted fund of the district.

Committee Approves Final Reports... The committee approved the PEPB Subcommittee final report, the HJR 35 (prepaid tuition plans) research paper, and the committee's final report. The reports will be published before the next legislative session and will also be available on the committee's website at [www.leg.mt.gov](http://www.leg.mt.gov). Just click on "Committees" and follow the links.

Bill Drafts Available Online... The committee's bill drafts, as well as the bill drafts requested by OPI and the Board of Regents, can be found on the website ([www.leg.mt.gov](http://www.leg.mt.gov)) by clicking on "2003 Session" then "2003 Session (LAWS)". You can find the bills by using the LC numbers.

For more information about the Committee's final meeting and recommendations, please call Connie Erickson at (406) 444-3064 or send e-mail to [cerickson@mt.gov](mailto:cerickson@mt.gov).

## ENVIRONMENTAL QUALITY COUNCIL

Council Approves Documents for Publication... The Environmental Quality Council held its final meeting of the interim on Sept. 12, and approved for publication the following reports and documents:

- *Coal Bed Methane and Water Policy Report* and an update of the *EQC Water Quality Regulation Handbook* prepared by the Coal Bed Methane and Water Policy Subcommittee; and
- an update of the *EQC Guide to MEPA* and MEPA public participation guides prepared by the EQC Agency Oversight and MEPA subcommittee.

At its previous meeting, the Council approved for publication the *Energy Law Handbook* and *Understanding Electricity in Montana*, both of which were prepared by the Energy Subcommittee.

Committee Reviews Agency Bill Draft Requests... The Department of Fish, Wildlife, and Parks presented 19 legislative proposals that stimulated a lot of discussion and feedback for the agency. EQC debated at length a joint DFWP/DNRC bill draft

request to replace the current \$10 a person state land access permit fee with a negotiated annual lease agreement between the DFWP and the Department of Natural Resources and Conservation that would be paid with additional DFWP conservation license revenue.

The EQC requested that all of the agency's legislative proposals be drafted for preintroduction with the exception of a proposal to increase boat decal fees. If DFWP decides to proceed with that proposal, it will have to find another legislator to request the bill draft.

Upland Game Bird Program Reviewed...Rep. Jim Shockley, Rep. Rick Ripley, former Senator Ed Smith, department officials, and people representing themselves or organizations presented testimony on DFWP's upland game bird program. A portion of the revenue from the sale of upland game bird licenses supports a program to improve upland game bird habitat and to purchase and release upland game birds into suitable habitat. Questions were raised about the program's costs and benefits.

Department Responds to EQC Inquiries... DFWP responded to a previous EQC inquiry about the agency's procedures for adopting rules under the annual or biennial seasonal recreation rule exemption to the rule adoption requirements of the Montana Administrative Procedure Act. The agency is involved in litigation over the adoption of a seasonal rule for outfitter fishing on portions of the Beaverhead and Big Hole rivers.

The EQC discussed its previous request that the DFWP submit quarterly a list of agency projects and activities for which an environmental review was not prepared in accordance with MEPA. The EQC reviewed options on how best to achieve its needs, including work load, session staff responsibilities, and timeliness. The EQC decided to withdraw its request at this time.

Council Recommends Clarification of Oversight Responsibilities.The EQC recommended that the next Legislature clarify that agency oversight responsibilities of the EQC include boards, commissions, and other entities that are administratively attached to the Department of Fish, Wildlife, and Parks, the Department of Environmental Quality, or the Department of Natural Resources and Conservation.

Information about the interim activities of the EQC and its subcommittees including meeting minutes, reports, and other interim work is available on the EQC website at <http://leg.mt.gov/Services/lepo/index.htm> or by contacting the EQC office at (406) 444-3742 or [mtheisen@mt.gov](mailto:mtheisen@mt.gov).

## LEGISLATIVE COUNCIL

Council Reviews Proposal for Transfer of Property...The Legislative Council met on Sept. 12 in Helena. The Department of Natural Resources and Conservation presented a proposal to transfer property owned by the Department of Labor and

Industry (old Shelby Job Service) to Toole County. The council supported the transfer, which will be presented to the state Land Board for approval.

The council also reviewed and approved proposed FY2004-05 budgets for the Legislative Services Division, interim committees and activities, and the legislative branch centralized information technology plan.

Pilot Projects to Record Committee Proceedings...Marilyn Miller, Chief Clerk of the House, presented two pilot projects for recording standing committee meetings during the 2003 session. One project would use an audio compact disc recorder to record all committee meetings held in a designated House committee room. The other project would use Television Montana video equipment to record all committee meetings held in a designated Senate committee room. Written minutes would not be produced for the committees meeting in these two rooms. The Council authorized the pilot projects and requested that staff explore the possibility of video recording the House committee meetings in lieu of audio recording.

In other business, the council:

- approved prices for 2003 session proceedings;
- discussed options for payment of legislator per diem during the 2003 session; and
- authorized drafting legislation to provide an immediate effective date for bills enacted during a special session unless a different time is prescribed.

The next council meeting is scheduled for Nov. 19, in Helena. For more information, call Lois Menzies at (406) 444-3066 or send e-mail to [lomenzies@mt.gov](mailto:lomenzies@mt.gov).

## UPCOMING LEGISLATIVE EVENTS

Reminder of Post-election Events...The Legislative Council has set the following dates in November for presession caucuses, Law School for Legislators (a continuing education program for all legislators), and new legislator orientation:

Senate and House Caucuses	Wednesday, Nov. 20 (morning)
Law School for Legislators	Wednesday, Nov. 20 (afternoon)
New Legislator Orientation	Wednesday, Nov. 20 (evening) through Friday, Nov. 22

Senate and House Caucuses: The political parties of each house of the Legislature will meet to elect officers and conduct other presession business.

Law School for Legislators: This half-day program, sponsored by the Legislative Council and the Montana Bar Association, provides continuing education for all legislators. Topics include fundamentals of the Montana Constitution, statutory construction and legislative intent, legislative impact on executive branch rulemaking, and ethics.

New Legislator Orientation: This program, sponsored by the Legislative Council, is for new legislators. It kicks off with a reception on the evening of Nov. 20. The next two days are packed with courses that help new lawmakers to hit the ground running.

For more information, call Lois Menzies at (406) 444-3066 or send an e-mail message to lomenzies@mt.gov.

## STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee to Offer Several Legislative Proposals...The State Administration and Veterans' Affairs Committee wrapped-up 16 months of work Sept. 12. The committee approved the final report on reforming Montana voting system laws and vote counting procedures and took final action on recommendations to restructure state veterans' affairs. The committee will introduce 11 bills for consideration by the next Legislature:

- LC0219 (Jent): Ban punch card ballot voting systems.
- LC0220 (Lenhart): Generally revise and update voting system technology provisions and vote counting procedures.
- LC0222 (Roush): Restructure state veterans' affairs.
- LC0223 (Lenhart): Update military veteran list of qualifying campaigns.
- LC0224 (Bohlinger): Eliminate 10-year waiting period for purchasing military service in the Public Employees' Retirement System (PERS).
- LC0225 (Toole): Allow a PERS retiree elected to public service to opt out of active PERS membership.
- LC0226 (Bohlinger): Allow current MT National Guard firefighters in PERS to transfer to Firefighters' Unified Retirement System.
- LC0227 (Jent): Provide a professional retirement option as an enhanced retirement benefit for members of the Teachers' Retirement System who attain 30 or more years of service.
- LC0294 (Lenhart): Transfer county detention officers from PERS to Sheriffs' Retirement System.
- LC0323 (Bohlinger): Allow participants in federal volunteer programs, such as the Peace Corps, to purchase that service in PERS (similar to purchase of military service).
- LC0324 (Clark or Bookout-Reinike): Establish a program and charge fees for state escort and protective measures if an entity wants to transport radioactive waste through Montana.

Committee May Meet in October...The SAIC may meet one more time to coincide with Secretary of Veterans' Affairs Anthony Principi's planned visit to Montana, tentatively scheduled for Oct. 19.

For more information on the activities of the SAIC, please contact Sheri Heffelfinger at (406) 443-5342.

## DISTRICTING AND APPORTIONMENT COMMISSION

Western Region Plan Adopted...On Sept. 16, the Districting and Apportionment Commission adopted the amended Plan 300 for the western region of the state. Amendments were adopted for Ravalli, Missoula, and Flathead counties.

Regional maps of the proposals and adopted legislative districts for the entire state and for the north-central, northeast, southeast/central, south-central, southwest, and western regions of the state are available through the "Redistricting" link on the legislative website.

Commission Schedule Highlighted...The commission will meet Nov. 19 for a public hearing and an executive session on the pairing of the 100 House districts with 50 Senate districts. Senate districts are required to be composed of two, contiguous House districts. The commission is meeting after the November elections in order to take into consideration the 25 holdover senators who will begin their first two years of the term under the existing plan and the final two years of the term under the new redistricting plan.

The commission will also hold a public hearing and executive session on the entire plan, all 100 House districts and 50 Senate districts, on Friday, Dec. 6. It is likely to be an all day hearing and the time will be announced in the near future.

The plan will be submitted to the Legislature by the 10th legislative day and the Legislature has 30 days to comment. The commission then has 30 days to finalize the plan and submit it to the Secretary of State, at which time it will become law. The new districts will be in effect for the 2004 election.

Dates to remember:

**Nov. 5** Election Day (1993 redistricting plan still in effect): Please VOTE

**Nov. 7** Deadline to submit suggested Senate pairings

**Nov. 19** Public hearing and executive session on pairing of House districts with Senate districts, 7 p.m., Capitol Building, Helena

**Nov. 22** Deadline for amendments to be submitted to receive staff support.

**Nov. 27** Deadline for written testimony to be sent to commission in advance of public hearing

**Dec. 6** Statutorily required public hearing and executive session on all 100 House districts and 50 Senate districts, Capitol Building, Helena (time to be announced)

Please send all written testimony and correspondence to the Districting and Apportionment Commission, PO Box 201706, Helena MT 59620. Correspondence and testimony will be copied and sent to each commissioner and the originals retained in the commission's permanent file. Please check the commission's website for more information at the "Redistricting" link on the Legislative Branch website at [leg.mt.gov](http://leg.mt.gov). For more information, contact Susan Byorth Fox at (406) 444-3064 or [sfox@mt.gov](mailto:sfox@mt.gov).

## REVENUE AND TRANSPORTATION COMMITTEE

Committee Meets in Wake of Special Session...With the ink barely dry on legislation passed during the August special session, the Revenue and Transportation Interim Committee (RTIC) met on Sept. 5 to conduct its statutorily-required liaison work with the Departments of Revenue and Transportation (DOR and MDT), to review the impacts of the special session on the state general fund, and to preview some of the numbers the committee will likely encounter as it confronts its revenue estimating responsibilities in November.

Grosse Pointe Blank...The committee continued its oversight of DOR's POINTS project by reviewing a POINTS I stability assessment report prepared by Dr. Joel Henry and a POINTS reconciliation plan report prepared by the POINTS system architect.

Henry concluded that DOR remains on schedule for achieving stabilization of POINTS I by Dec. 31, 2002, but said that risks are still present that could cause delays. Three risk areas include the vacancy in the IT administrator position, staff turnover, and data integrity within the POINTS database. DOR has contracted with IBM to test the integrity of the information in the database and anticipates a report on IBM's findings by mid-October.

DOR staff reminded the committee that "stabilization" of POINTS I does not mean the resolution of all priority defects; rather, the term means functionality of the system's business functions.

The system architect reported that the plan for reconciling POINTS I with the individual and corporate income tax enhancements, known as POINTS II, is realistic and that the work plan is reasonable. He also described some risks to successful reconciliation, including other work distractions that affect the reconciliation team, sufficient data testing, and loss of key staff.

Kurt Alme, Director, DOR, briefly discussed changes occurring in the department as a result of budget reductions, including impacts to customer service, DOR publications, internal operations, and employee equipment and training. He noted that budget reductions will also result in the elimination of the reappraisal Self Reporting Project and may result in delays in the current reappraisal work plan.

Department of Transportation...Dave Galt, Director, MDT, reviewed the action taken in the special session to fund the Department of Justice's Motor Vehicle Division

with \$6.6 million from the non-restricted highway state special revenue account. Because MDT is funded primarily with state special revenue and federal funds, general fund budget reductions did not impact the agency. However, MDT is subject to the global hiring freeze enacted during the special session. Galt reminded the committee that the \$6.6 million shift was intended to be a temporary fund transfer for FY 2003.

Galt also reported that MDT has no plans to request any additional general fund money in the 2003 session, nor does the agency intend to seek a gas tax increase.

Legislative Fiscal Division Reports on General Fund...The Legislative Fiscal Division (LFD) reviewed the overall impact to the general fund from special session legislation. Based on the 14 revenue bills enacted in August and other legislation, the general fund account is expected to end FY 2003 with an unreserved ending fund balance of \$27.2 million.

With the caveat that two months of collection data does not a trend make, LFD said that data from July and August--the first two months of FY 2003--suggest that individual and corporation income tax collections are not on track with the special session revenue estimates contained in HJR 1. First quarter estimated payments for both individual and corporate taxpayers are due mid-September and those returns should provide more clues to the state's fiscal prognosticators.

Revenue Estimates and Meeting Schedules...The September meeting marked the conclusion of RTIC's regular statutory duties that are not part of the revenue estimating process. Section 5-18-107, MCA, provides:

"(1) The revenue and transportation interim committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(2) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(3) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department, and any other agency that has information regarding any of the tax or revenue bases of the state."

RTIC is scheduled to meet Tuesday, Nov. 19 to adopt preliminary revenue estimates for the general fund and certain other nongeneral fund accounts. The Legislative Fiscal Division and the executive branch will present revenue estimates and assumptions for the 2004-05 Biennium and the committee will determine which combination of numbers to include in the revenue estimating resolution to be considered by the 58th Legislature.

Reasoning that the more information that can be gathered prior to November's meeting, the better, the committee added an October meeting to its schedule. At 8:30 a.m. on Monday, Oct. 14 in Room 102 of the Capitol, RTIC will convene to hear perspectives on the national and state economies from DRI-WEFA, a national economic forecasting organization; Dr. Paul Polzin, director of the University of Montana's Bureau of Business and Economic Research; Dr. Myles Watts, department head of Montana State University's Department of Agricultural Economics; and Dan Dodds of the Department of Revenue.

Contact Leanne Kurtz, RTIC staff, with any questions about committee activities or the upcoming meetings. Leanne may be reached by e-mail at [lekurtz@mt.gov](mailto:lekurtz@mt.gov) or phone at (406) 444-3593. For general committee information or to access committee minutes and reports, visit RTIC's website at [http://leg.mt.gov/Interim\\_Committees/Revenue\\_Transportation/index.htm](http://leg.mt.gov/Interim_Committees/Revenue_Transportation/index.htm).

## LEGISLATIVE FINANCE COMMITTEE

Committee to Meet in October...The Legislative Finance Committee (LFC) will meet on Thursday, Oct. 3 and Friday, Oct. 4. The meeting will begin each day at 8 a.m. in the Capitol, Room 102. An agenda for the meeting can be found on the Legislative Fiscal Division (LFD) website at <http://leg.mt.gov/fiscal/index.htm>. The meeting agenda is expected to include:

- An update on the fiscal 2003 general fund ending fund balance
- An outlook for the 2005 biennium ("Big Picture Report")
- A discussion of the 2005 biennium budget development
- An update on fire suppression costs
- A report of potential cost over-runs and supplemental requests
- An analysis and recommendations regarding use of language in HB 2
- An update on state assumption of district courts
- An update regarding information technology management (SB 131)
- The final report/recommendations of the SB 162 Earmarking Review Subcommittee
- The final report/recommendations of the Postsecondary Education Policy and Budget Subcommittee
- The final report/recommendations of the HJR 1 Subcommittee on Public Mental Health Issues

The LFC will also be asked to consider and approve drafts of a few committee bills.

For further information, check out the LFD website or contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or at (406) 444-2986.

## DEAR MASON AND ROBERTS

**Dear Mason and Roberts:** I consider myself to be an action sort of guy. Now, don't get me wrong. I do learn a lot listenin' to folks testifying on bills. However, after all is said and done, I'm itchin' to round up those bills and head them out of committee -- or maybe just put some of them out to pasture. I confess, though, that I get a bit confused about exactly what we can and cannot do with all those bills that land in our committee. I'd be forever grateful if you could field my questions.

Sincerely,  
Sen. Mooemout

**Q: Do we have to take action on every bill that is referred to our committee?**

A: House rules require a committee to act on each bill in its possession (House Rule 30-50). There is no similar requirement in the Senate. In practice, both House and Senate committees have allowed bills to "die in committee" by failing to take action on the bills in time for the bills to meet bill transmittal deadlines.

**Q: What action may we take as a committee in disposing of a bill?**

A: A Senate or House committee may recommend that a bill be approved (i.e., do pass or be concurred in) or disapproved (do not pass or be not concurred in), with or without amendment. A committee incorporates its recommendations regarding passage of a bill in a committee report, which is submitted to the appropriate house. A committee may also recommend that a bill in its possession be referred to another committee. (Senate Rules 30-60 and 30-80; House Rule 30-50)

Reporting of bills as do not pass or be not concurred in is discouraged because it uses valuable floor time for legislation that is not recommended by the committee.

In lieu of reporting a bill out of committee, a House committee may table the bill (House Rule 30-50). This House rule reflects a practice in the Montana Legislature of disposing of a bill in committee by tabling. In reality, however, this practice is effective only after a bill transmittal deadline has passed.

**Q: May our committee report a bill to the Senate or House without a recommendation?**

A: No. A committee report must contain a recommendation (Senate Rule 30-60; House Rule 30-50).

**Q: What's the process for referring a bill to another committee?**

A: A bill in the Senate's possession may be referred to another committee at any time before its passage by a motion to rerefer and a majority vote in favor of the motion (Senate Rules 30-80 and 50-50).

Likewise, the House may rerefer any bill that is in its possession that has not been finally disposed of. If the bill has been reported from the first committee with a do pass or be concurred in recommendation, it may be referred to another committee by

majority vote. If there is no favorable committee report, the bill may be referred to another committee by a motion approved by not less than three-fifths of the members present and voting. (House Rules 40-80 and 50-150)

**Q: After our committee has taken action on a bill, are we allowed to change our minds?**

A: A Senate or House committee may reconsider any action taken on a bill as long as the bill remains in the possession of the committee (Senate Rule 30-110; House Rule 30-50).

The House rule further specifies that a committee action may not be altered except by reconsideration and further formal action by the committee. In addition, a committee member need not have voted with the prevailing side in order to move reconsideration.

**Q: Let's say that my bill has been tabled in committee, and I can't get the committee to reconsider its action. Is there any way that I can move the bill to the floor for consideration on second reading?**

A: Both the Senate and House may withdraw a bill from a committee. (This action is sometimes referred to as "blasting" the bill from committee.) A bill may be withdrawn from a Senate committee by motion made on the Senate floor and approved by a majority vote (Senate Rule 50-50; Mason's, sec. 491). In the House, a motion to withdraw a bill from a House committee requires approval from three-fifths of the members present and voting (House Rules 40-90 and 50-150).

Note that if a bill was amended in committee, tabled, and then withdrawn from committee to be considered on second reading, the bill will not contain the committee amendments (House Rule 30-50; Mason's, secs. 668-673).

*Do you have rule questions that you would like us to cover in this column? If so, send them to Lois Menzies, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706 or lomenzies@mt.gov.*

## NEW MILEAGE REIMBURSEMENTS

House Bill No. 6, enacted during the August special session, changed the mileage reimbursements under 2-18-503, MCA, for the use of a private motor vehicle by state employees and legislators. This article discusses those changes that became effective Aug. 13.

### **For state employees, based in Helena, authorized to travel by motor vehicle:**

1. If a state employee chooses to use a privately-owned motor vehicle even though a government-owned or leased motor vehicle is available, the employee will be reimbursed at 52% of the low mileage rate allowed by the Internal Revenue Service for the current year. The current calculated rate is \$0.1898 per mile (see Note #1 below).

2. If a state employee uses a privately-owned motor vehicle because a government-owned or leased motor vehicle is not available, or because the use is in the best interest of the governmental entity, and a notice of unavailability or specific exemption is attached to the claim, the employee will be reimbursed at a rate equal to the mileage allotment allowed by the IRS. The current rate is \$0.365 per mile. Mileage exceeding 1,000 miles in a calendar month will be reimbursed at 3 cents less per mile.

### **For legislators authorized to travel by motor vehicle in performance of official duties:**

1. If a legislator uses a privately-owned motor vehicle **to travel between his or her residence and Helena**, the legislator will be reimbursed at a rate equal to the mileage allotment allowed by the IRS for the first 1,000 miles in a calendar month, and 3 cents less per mile for additional miles traveled within the calendar month. The current IRS rate is \$0.365 per mile.

2. If a legislator uses a privately-owned motor vehicle **to travel between his or her residence and a destination other than Helena**, the legislator will be reimbursed as follows:

a. If the legislator lives in a city where a government-owned or leased motor vehicle is available (see Note #2 below), and the legislator chooses to use a privately-owned motor vehicle even though a government-owned or leased motor vehicle is available, the legislator will be reimbursed at 52% of the low mileage rate allowed by the IRS for the current year. The current calculated rate is \$0.1898 per mile (see Note #1 below).

b. If the legislator uses a privately-owned motor vehicle because a government-owned or leased motor vehicle is not available, or because the use is in the best interest of the governmental entity, and a notice of unavailability or specific exemption is attached to the claim, the legislator will be reimbursed at a rate equal to the mileage allotment allowed by the IRS. The current rate is \$0.365 per mile. Mileage exceeding 1,000 miles in a single calendar month will be reimbursed 3 cents less per mile.

3. If a legislator, **living in Helena during a regular or special legislative session, uses a privately-owned vehicle to travel between Helena and a destination other than his or her permanent residence**, the legislator will be reimbursed as follows:

a. If the legislator uses a privately-owned motor vehicle even though a government-owned or leased motor vehicle is available, the legislator will be reimbursed at 52% of the low mileage rate allowed by the IRS for the current year. The current calculated rate is \$.1898 per mile (see Note #1 below).

b. If the legislator uses a privately-owned motor vehicle because a government-owned or leased motor vehicle is not available, or because the use is in the

best interest of the governmental entity, and a notice of unavailability or specific exemption is attached to the claim, the legislator will be reimbursed at a rate equal to the mileage allotment allowed by the IRS. The current rate is \$0.365 per mile. Mileage exceeding 1,000 miles in a calendar month will be reimbursed at \$0.335 per mile.

#### NOTES:

**Note #1.** As amended by HB 6, section 2-18-503(2)(a) states in part, "... the officer or employee may be reimbursed only at the rate of 52% of the low mileage rate allowed by the IRS for the current year." The rate commonly referred to as the state's "low mileage rate" is not used because it is not established by the IRS; rather it is established in Montana statute as 3 cents less than the IRS rate.

The standard mileage rates allowed by the IRS for 2002 are \$0.365 per mile for business mileage, \$0.14 per mile for charitable mileage, and \$0.13 per mile for medical and moving mileage. While it could be argued that the "low" IRS rate is \$.13 per mile, absent a specific definition, the business rate will be used for reimbursement of business travel. Calculation of the reimbursement rate would be: \$0.365 per mile x 52% = \$0.1898 per mile.

**Note #2.** For the purposes of interpreting HB6, a legislator is considered to live in a city where a government-owned or leased vehicle is available if the legislator's mailing address is Bozeman, Billings, Butte, Dillon, Havre, Helena, or Missoula.

## TIME AND TIDE

<u>Event</u>	<u>Days remaining</u>
Target date for completion of interim committee work (September 15, 2002)	Time has elapsed
General election (November 5, 2002)	36
58th Legislature convenes (January 6, 2003)	98

## BACK PAGE

### CAN WE BE BOTH SAFE AND FREE?

By Sheri Heffelfinger  
Legislative Research Analyst

#### THE STAKES OF THE 2003 SESSION

No doubt the 2003 Session of the Montana Legislature will be dominated by debate over how to balance the state budget. However, Montana legislators will also have to decide how to balance the public's right to know with the government's obligation to provide security. How lawmakers respond to this challenge will affect public policy long after the biennial appropriation bills have expired.

On September 11, 2001, we watched in horror as two jetliners slammed into the twin towers of the World Trade Center, as people hurled themselves out of windows to escape the flames, and as loved ones said their goodbyes on cell phones. We watched as our firefighters, police officers, and security personnel died trying to save others when the towers collapsed in a 1.8 million-ton heap of death and destruction. We witnessed the deadly flames and black smoke billow from the Pentagon. And we raised our heads in grief-stricken pride when we heard of the heroic actions of people we didn't know and how they kept us from even more terror and death with a defiant "let's roll". That day 3,056 people died in terrorist attacks that took minutes to execute, but had been years in the making.

Thirteen months later, we are still trying to get a handle on what we knew, when we knew it, and whether what we did know or what we could have done would have prevented the 9-11 attacks. In finding answers to these questions, we hope to prevent such a tragedy from ever happening again. We have named this hope "homeland security".

#### WHAT DOES HOMELAND SECURITY MEAN FOR MONTANA?

What does "homeland security" mean for Montana and Montana's Legislature? Here in the "last best place" we can feel safe, right? After all, terrorists go after "big" targets, high impact targets. That rules us out, right? But, Montana's border with Canada and our open spaces can offer more than a refuge from big-city life. Montana can offer a last best place for terrorists to hide, to plan, to traffic their wares, and to outfit themselves. Conventional wisdom also tells us that enemies will exploit the weakest link. Finally, lest we forget Oklahoma City, we must also bear in mind that terrorism is not only a threat of international origin, but it can be of domestic origin as well. Thus, homeland security for Montana, just as for every other state in our union, means that we, too, have a responsibility to do our part to protect national security. We, too, must assess the threat, know our vulnerabilities, take stock of our security measures, and act accordingly.



In the weeks following the 9-11 attacks, Governor Martz by executive order established the Governor's Homeland Security Task Force and, in step with national homeland security activities, charged the Task Force to coordinate:

the development of clear lines of communication and protocol for working with the U.S. Office of Homeland Security, the Anti-Terrorism Task Force as formed by the U.S. Department of Justice; and all other relevant federal, state, local, tribal and private agencies and organizations; and

**the development and implementation of a comprehensive statewide strategy to strengthen Montana's capabilities to detect, prepare for, prevent, protect against,** respond to and recover from any terrorist threats or attacks within the state. [emphasis added]

This is a tall order, but the Task Force is taking its duties seriously by asking the threshold questions: "Who or what is the threat in Montana? Where are we most vulnerable? What security measures are in place now and how can they be strengthened?" The answers to these questions could be characterized as sensitive or "classified", to use a term of the intelligence trade.

### KEEPING SECRETS

Classifying information is more than stamping the word "SECRET" in red ink at the top of a report. Classified or sensitive security information means, simply, that in the wrong hands, the information could compromise our security. But simplicity ends here.

Who in Montana should be allowed to keep secrets? To whom should secrets be given? Should the Governor have access? Should state lawmakers? Should people outside of law enforcement, such as those responsible for civil defense, emergency response, disaster planning, or public health? If so, how should that information be collected and protected when the public's right to know is a fundamental constitutional right we are all loath to infringe upon.

The federal government has an elaborate system for classifying and disseminating sensitive national security information. Congress, too, in exercising checks and balances on executive authority, has intelligence committees that can conduct meetings behind closed doors. Likewise, many states are considering establishing similar committees at the state level. However, this raises concerns. The driving concern of those who keep secrets is how to address what has been called the huge intelligence failure of 9-11 where security information was so "secret" that federal, state, local, and other public and private entities were "in the dark" about the threat and where the indicators of an impending attack were of little help to local jurisdictions. In the wake of this concern, new executive orders are being issued, new guidelines about how government agencies are to provide information to the public are being published, and new laws, such as the "Homeland Security Information Sharing Act" (H.R. 4598), are being debated in Congress.

For Montana, H.R. 4598 will mean that various federal agencies with national security information that may be of value to Montana state and local governments would be allowed to share that information. Thus, when Montana is working to develop and implement a strategy to detect, prepare for, prevent, and protect against terrorist activities in our state, federal agencies, such as the FBI or the Department of Homeland Security, would be able to share with Governor Martz, the Attorney General, Task Force members, state and local law enforcement officials, local health officials, and private industries, such as airline officials or utility companies, information about whether there are suspected terrorists in Montana and whether there are indications that Montana's security is at risk and, if so, about the nature of that risk--is it chemical, biological, or something else? State and local public officials or private industry may also become aware of security information that federal agencies do not have, and they need to be able to share and analyze that information so it can be integrated into the bigger picture. This sharing and coordination of security information creates new concerns, however, and raises the specter of abuse.

### IF THE RIGHT TO KNOW IS NOT ABSOLUTE, WHO DECIDES?

Sunshine laws--laws that provide for the public's right to know, requiring open meetings, and public access--protect us from abuses of power by allowing us to look over Big Brother's shoulder. Montana's sunshine laws are among the most liberal in the nation. These laws are rooted in Article II, section 9, of the Montana Constitution, which reads:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The only Constitutional exception to the right of the public to know is when the demand of individual privacy clearly exceeds the merits of public disclosure. Can homeland security information be protected from public disclosure in Montana? Because there is no legal precedent in Montana that lends itself to interpreting an "individual privacy" right as a "security" right, the prevailing wisdom among legal analysts is that no, homeland security information cannot be withheld from public disclosure.

Surely, you say, common sense can and must prevail, right? Just as a bank can keep secret the combination to its vault, state government can keep secret, for example, its physical security plans for the state capitol, a state assessment of the chemical or biological threats to Montana's livestock, agriculture, or environment, or an assessment of the actual capabilities or intent of suspected terrorists to carry out an attack on a public building, a public official, or a public utility, right? Surely, if law enforcement officials have information relevant to our state security, they can share that information with the Governor or other elected public officials without the risk that the information will be made public, right?

Fortunately and unfortunately, the answer is both yes and no. Yes, one can assume that people with the responsibility to protect our security will do their jobs as best as they can. Yes, people will make judgment calls about what information should be shared with whom and when or if certain information requested by the media will be disclosed or not. But no, there is nothing in our state laws that specifically address who should make these judgment calls or on what principles such judgments should be based. Thus, the Governor's own Homeland Security Task Force is struggling to decide how to handle sensitive information about potential security threats, vulnerabilities, and security measures. Should the public be noticed of Task Force meetings? Should the press be asked to leave when sensitive information comes up? Someone must draw the line somewhere.

The federal government is trying to draw a line. A provision in the Homeland Security Information Sharing Act states that "information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information". This makes sense for federally collected and classified information, but what about security information generated by state or local governments? How will that information be protected? Unless Montana's lawmakers are willing to take "trust me" for an answer or to adopt a policy of "we won't ask, so please don't tell", legislators should be prepared to consider this question during the 2003 Session.

#### OVERVIEW OF CURRENT LAW

Although a full legal analysis of Montana's current sunshine laws is beyond the scope of this Back Page article, perhaps this article can highlight the issues for debate by briefly reviewing some of Montana's current laws.

Montana's Constitutional language was provided above. Turning to Montana's statutory law, section 2-6-102, Montana Code Annotated (MCA), reads as follows:

**2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are **constitutionally protected from disclosure** are not subject to the provisions of this section. Information that is **constitutionally protected** from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to **individual or public safety**.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or **individual or public safety or security of public facilities**, including jails, correctional

facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. **A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.** [emphasis added]

The statute above seeks to define constitutionally protected information as including information required to protect a safety or security interest. But would a court agree? Constitution trumps statute, and the Constitution clearly does not address individual or public security.

What about criminal justice information? Cannot that information be shared with certain public officials on a need-to-know basis, but also protected from public disclosure? Some statutory provisions in Title 44, chapter 5, MCA, do protect certain criminal justice information from public disclosure based on individual privacy rights. "Criminal justice information", "confidential criminal justice information", "criminal intelligence information", and "public criminal justice information" are all defined in section 44-5-103, MCA. But a close inspection of these statutes reveals complex and contradictory laws that suggest that only some of this information is actually protected from public disclosure, but that most is not. Furthermore, section 44-5-104, MCA, states that the criminal justice statutes requiring confidentiality do not supersede public disclosure required by law. That brings us back to Article II, section 9, of Montana's Constitution. Finally, to the extent that criminal justice information can, by law, be withheld from public disclosure, section 44-5-303, MCA, provides that it may be disseminated only to: (1) other criminal justice agencies, (2) those specifically authorized by law to receive it, and (3) those authorized by court order.

These statutes, therefore, do nothing to assist officials trying to decide whether they can provide a classified briefing on a terrorist threat in Montana to the Governor without notifying the public, whether the press can be asked to leave a meeting of the Homeland Security Task Force when an FBI official has security information to share, whether a government agency can protect from public disclosure an assessment of state government's vulnerabilities to cyber-terrorism, or whether the layout of Montana's power grid is open to public inspection. And what of the Legislature's own ability to assess threats and vulnerabilities relevant to legislative operations or of the Legislature's ability to perform its oversight functions of executive agencies?

#### A REAL LIFE SPY GAME

To most of us, intelligence gathering, electronic intercepts, infiltration of terrorist networks, confidential memos, and secret meetings are all part of a contrived Hollywood plot given life only by the talent of suspense writers and mastery of special effects artists. But the gathering, analyzing, and sharing of intelligence and security information is a real and daily challenge for those called upon to be our eyes and ears and for those who must decide what to keep secret and what not to.

How should Montana's Legislature navigate these issues and balance the public's right to know with government's responsibility to protect public security? There are a wealth of quotes that offer advice, most of which provides us with strong warnings against exchanging freedom for security, such as the following short list:

As nightfall does not come at once, neither does oppression. -- U.S. Supreme Court Justice William O. Douglas

The only security of all is in a free press. -- Thomas Jefferson

Those willing to give up a little liberty for a little security deserve neither security nor liberty. -- Benjamin Franklin

Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves. -- William Pitt

Then there are quotes that remind us that government's responsibility is to secure the blessings of liberty, such as was written the editorial board of the *Seattle Post-Intelligencer* on July 4, 2002:

Both the justification for government and the power with which it is endowed are rooted in that need to protect and preserve individual liberties.

Montana lawmakers may also want to reflect on the words of an editorial published in *The Washington Times* on July 25, 2002, regarding the proposed new Department of Homeland Security:

Today, Congress begins floor debate on an unprecedentedly far-reaching bill intended to transform the way our government manages domestic security. The general purposes of this legislation spring from the mandate of our Constitution's preamble: "to insure domestic tranquility, provide for the common defense . . . and secure the blessings of liberty to ourselves and our posterity." There can be no more fitting work for the Congress to undertake. Should terror strike again on our soil--as almost every expert and high government official believes will happen--this legislation's shortcomings will be objectively measurable in the charred flesh and drained blood of our people. It is by this standard of seriousness that members of Congress and the president should judge their decision-making over the coming days and weeks.

#### WHAT PRICE ARE WE WILLING TO PAY?

If the cost of liberty is eternal vigilance, then liberty must pay a price for vigilance. We know the price we paid on September 11, when vigilance failed. Nevertheless, we cannot afford to forget the cost at Valley Forge, Gettysburg, and Normandy. Yes, debate on how to balance our budget will dominate the 2003 Session. But lawmakers cannot ignore their responsibility to balance our need for safety with our right to be free from oppression. In trying to balance this budget, lawmakers must never forget that these appropriations are paid for in blood.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

### OCTOBER

October 3, Legislative Finance Committee, Room 102, 8 a.m.

October 4, Legislative Finance Committee, Room 102, 8 a.m.

October 14, Revenue and Transportation Committee, Room 102, 8:30 a.m.

October 19, State Administration and Veterans' Affairs Committee (tentative)

### NOVEMBER

November 5, General Election Day

November 18-19, Legislative Audit Committee, Room 137

November 19, Revenue and Transportation Committee, Room 152

November 19, Districting and Apportionment Commission, 7 p.m.

November 20, Senate and House caucuses, morning

November 20, Law School for Legislators, afternoon

November 20-22, New Legislator orientation

